Committee on Ways and Means

H.R. 2830, THE PENSION PROTECTION ACT OF 2005

OVERVIEW

1. Enhances retirement security by creating incentives to increase savings opportunities and participation in Individual Retirement Accounts (IRAs) and defined contribution (DC) pension plans.

2. Provides tax benefits to improve the affordability of health care and long-term care.

3. Reforms outdated funding rules for single employer defined benefit (DB) pension plans to protect workers' pensions and the financial security of the Pension Benefit Guaranty Corporation (PBGC).

4. Reforms funding rules for multiemployer DB pension plans by creating a structure to identify financially troubled plans and to develop quantifiable benchmarks to measure financial improvement.

5. Provides workers and retirees with timely information about the financial status of their pension plans.

6. Provides legal certainty to hybrid pension plans, such as cash balance plans, to protect more than nine million workers who currently depend on these plans for retirement security.

7. Allows employers with defined contribution pension plans to provide plan participants with access to professional investment advice.

1. ENHANCING RETIREMENT SAVINGS IN IRAS AND PENSION PLANS

Permanence of IRA and Pension Savings Provisions

Current Law. The *Economic Growth and Tax Relief Reconciliation Act of 2001* included several provisions to enhance pension participation and retirement savings. For example, the law increased annual contribution limits for IRAs and qualified pension plans, created additional "catch-up" contributions for individuals age 50 and older, and created incentives for small employers to offer pension plans. These reforms are scheduled to expire in 2010.

H.R. 2830. Makes permanent the IRA and pension provisions.

Saver's Credit

Current Law. Eligible individuals who make contributions to an IRA or qualified pension plan receive a Federal "match" in the form of an income tax credit for the first $2,000 of annual contributions. The credit equals 50 percent of the contribution for individuals with adjusted gross incomes (AGI) of $15,000 or less ($30,000 or less for married couples). The credit phases down to zero for individuals with AGI of $25,000 or less ($50,000 or less for married couples). The credit is scheduled to expire after December 31, 2006.

H.R. 2830. The credit for contributions to IRAs and pension plans is made permanent. The bill also provides for the automatic deposit of the credit to a savings account, IRA or pension plan.

Automatic Enrollment

Current Law. Employees who have access to a DC pension plan must elect to participate by enrolling in the plan and making investment choices. Data show that many employees who have access to employer pension plans never enroll. Many pension experts believe that pension participation would increase if employees were automatically enrolled in the plan and given the option to opt out. Although automatic enrollment is allowed under current law, the majority of employers do not provide automatic enrollment for a variety of reasons. For example, employers with generous matches may find automatic enrollment prohibitively expensive. Others may be concerned about fiduciary liability or inadvertently running afoul of other legal requirements.

H.R. 2830. Safe harbors are created to encourage employers to offer automatic enrollment arrangements. Specifically, the employer is deemed to have met the non-discrimination rules and the requirements for vesting and matching contributions if the automatic enrollment arrangement provides for the following:

- Employee contributions equal to 3 percent of pay in the first year, increasing annually by one percentage point until reaching 6 percent of pay (up to a maximum of 10 percent).
- Employer matching contributions of 50 percent. Alternatively, employers may contribute 2 percent of pay on behalf of all employees regardless of whether employee contributions are made.
- Employer contributions must fully vest after two years.

The bill directs the Secretary of Labor to develop a fiduciary safe harbor for the sound investment of pension assets for participants who do not direct the investment of their automatic contributions. In addition, the bill provides for the preemption of state regulations that conflict with the provision.

IRA and Pension Distributions for Reservists and National Guardsmen

Current Law. Distributions from an IRA or pension plan are subject to a 10-percent penalty if the distribution is made prior to death, disability or attainment of age 59½, unless one of several exceptions applies.

H.R. 2830. The 10-percent penalty is waived for military reservists and national guardsmen who are called to active duty for at least 180 days. Withdrawn amounts may be repaid to the IRA or pension plan within two years of the distribution without regard to the annual contribution limits. The provision applies to distributions made during active duty.

DROP Pension Plans for Public Safety Employees

Current Law. State and local governments may offer employees a Deferred Retirement Option Plan (DROP) as a feature of the DB plan. If an employee retires early, he or she may choose to receive annuity payments from the DB plan. Alternatively, the DROP feature may be exercised. Under this feature, the employee receives individual account credits not to exceed the DB benefit. Employees who exercise this option give up their right to accrue additional benefits under the DB plan if they continue to work after the DROP election is made. Distributions from the DROP are subject to the 10-percent early distribution penalty, unless an exception applies.

H.R. 2830. The 10-percent penalty is waived for distributions made by public safety employees in connection with a DROP benefit. The waiver applies only to amounts that would have been payable as an annuity had the employee retired and taken DB annuity payments. The provision applies to employees of State and local governments who provide police protection, firefighting services, or emergency medical services.

Expand IRA Eligibility for Members of the Military

Current Law. Annual contributions to an IRA are limited to the lesser of (1) $4,000 in 2005 (increasing to $5,000 in 2006) or (2) the individual's earned income. Combat pay is not treated as earned income for tax purposes because it is not taxable. As a result, military personnel whose only source of income is combat pay are not eligible for IRA contributions.

H.R. 2830. Combat pay is treated as earned income for purposes of IRA eligibility. As a result, military personnel whose only source of income is combat pay are eligible to make IRA contributions. Combat pay continues to be tax-free, as provided under current law.

Split Tax Refunds

Current Law. No provision.

H.R. 2830. The IRS is directed to provide for "split tax refunds." In other words, taxpayers who are due a Federal income tax refund may choose to have the IRS deposit a portion of that refund directly to an IRA chosen by the taxpayer. The option would be made when the individual files his or her tax return.

Encouraging Lifetime Annuities from DC Plans

Current Law. DC plans typically do not offer lifetime annuities as a distribution option under the plan because the standards and requirements for offering an annuity in a DC plan are very burdensome to plan sponsors. In general, plan sponsors may be subject to fiduciary liability if they do not choose the "safest available annuity."

H.R. 2830. The Secretary of Labor is directed to issue regulations to clarify that the selection of an annuity as a form of distribution from a DC plan is subject to the current applicable fiduciary standards under the Employee Retirement Income Security Act (ERISA). Clarifying fiduciary responsibilities should encourage more employers to offer lifetime annuities as a distribution option from DC pension plans.

Mapping

Current Law. If the plan sponsor of a participant-directed DC plan changes third-party administrators or decides that one or more of the investment choices under the plan should be replaced, there is no standard for investment of plan assets in the absence of an investment decision by the plan participant. Plan sponsors may be subject to fiduciary liability if the funds are not placed in the safest available investment option, such as a money market.

H.R. 2830. To keep participants invested in funds that meet their investment needs, the bill requires plans to inform participants that, if no contrary instruction is given, the portion of their accounts invested in the fund being eliminated will be "mapped" to a designated fund with similar investment or risk/reward characteristics. If, in fact, no instruction is given, fiduciary protection is provided for the change in investment options.

2. AFFORDABILITY OF HEALTH CARE AND LONG-TERMCARE

Enhancing Affordability of Health Insurance for Public Safety Officers

Current Law. Distributions from qualified pension plans are taxable if the contributions were made on a pre-tax basis.

H.R. 2830. Public safety officers who retire or become disabled may make tax-free distributions of up to $5,000 annually from governmental pension plans if the distribution is used to purchase health or long term care insurance. The benefit is available to law enforcement officers, fire fighters, chaplains, rescue squad members and ambulance personnel.

Creation of Combination Insurance Products

Current Law. Benefits provided by a long term care (LTC) insurance contract are tax-free. However, LTC products cannot provide other kinds of insurance and cannot have a cash surrender value. Moreover, distributions from an annuity that are used to pay for long-term care may be subject to a 10-percent penalty in addition to income tax.

These rules discourage the development of combination insurance products, which may be more attractive to consumers by providing various insurance protections in a single product with a savings feature.

H.R. 2830. The provision allows annuities to include riders for long-term care coverage and updates the rules regarding combinations of life insurance and LTC products. Premiums could not be deducted as medical expenses. Tax-free conversions of existing life, annuity and LTC products into annuities with long-term care riders are permitted.

Modification of "Use-It-or-Lose It" Rules

Current Law. Employers may offer employees the option to participate in tax-preferred Flexible Spending Accounts (FSAs) as part of a cafeteria plan. FSAs may be established for health care or dependent care expenses. Distributions from a health care FSA are not subject to tax if used to pay un-reimbursed medical expenses, such as co-pays, deductibles and medical expenses that are not covered by health insurance. Distributions from a dependent care FSA are not subject to tax if used to pay un-reimbursed child care expenses. According to Treasury regulations, balances remaining in the FSA at the end of the year revert to the employer.

The "use-it-or-lose-it" rule is imposed to ensure that FSAs are not used as vehicles for deferred compensation. However, the rule encourages employees to spend the account balances on frivolous expenses to avoid forfeiture. Alternatively, the rule may discourage employees from participating in FSAs altogether.

H.R. 2830. Up to $500 of unused health care and dependent care FSA balances may be carried forward in the FSA. In the case of health care FSAs, the unused amount may be transferred to a Health Savings Account, subject to the annual contribution limits.

Subrogation

Current Law. Nearly all private employer-sponsored plans cover medical expenses that participants incur due to injuries caused by third parties. The standard reimbursement provisions of ERISA provides that responsible third parties to reimburse the health plan for medical expenses it paid on behalf of an injured participant. If the participant recovers medical expenses from the third person, the health plan is reimbursed for the benefits it paid. Recent court decisions have undermined the ability of health plans to recover costs paid out to participants that are awarded additional damages for the same claim.

H.R. 2830. Clarifies that health plans and employers are able to enforce their routine reimbursement provisions with greater certainty.

3. FUNDING REFORMS FOR SINGLE EMPLOYER PENSION PLANS

In General

Current Law. Employers must make annual minimum funding contributions to their pension plans to ensure they have enough assets to pay promised benefits. The minimum funding contribution is determined under a two-tiered system:

1. Employers that have assets to cover 90 percent of their liabilities are considered "well-funded." They must contribute enough to fund benefits earned during that year plus a portion of their amortized liabilities that are being funded over several years. These amounts may be calculated using reasonable actuarial assumptions.

2. Employers that are less than 90 percent funded must make additional "deficit reduction contributions (DRC)." These amounts must be calculated using interest rates and mortality rates that are specified in the law.

H.R. 2830. Repeals the current two-tiered system and replaces it with a single funding standard, which is measured using specified funding rules.

Funding Target

Current Law. Employers must fund up to 90 percent of the plan's total liabilities (80 percent in some cases).

H.R. 2830. Employers must fund up to 100 percent of the plan's total liabilities. The funding target is phased in over five years, starting in 2007, for plans that are not subject to the DRC.

Measuring Assets

Current Law. To determine whether the plan's assets are sufficient to cover liabilities, plans are allowed to average the market value of their assets over five years as long as the averaged value is between 80 percent and 120 percent of actual market value.

Averaging or "smoothing" helps reduce volatility, thus making employer contributions more predictable. However, too much smoothing reduces the accuracy of the measurement and can mask the plan's true funding status.

H.R. 2830. Employers are allowed to average their assets over three years as long as the averaged value is between 90 percent and 110 percent of actual market value.

Measuring Current Liabilities – Interest Rate

Plans must calculate the "present value" of their liabilities to determine whether they have met their funding target. The present value tells you what a future sum of money is worth today assuming a given interest rate. Lower interest rates result in larger liabilities, and vice versa. Employers must also use certain assumptions about mortality rates to measure their liabilities.

Current Law. Employers must use an interest rate based on a four-year weighted average of long-term, investment grade corporate bonds. After 2005, employers will be required to use an interest rate based on a four-year weighted average of the 30-year Treasury bond rate.

Current law may not provide an accurate measure of an employer's pension liabilities because the same interest rate is used to measure all benefit obligations, regardless of when those obligations are due. As a result, some employers are required to make inflated contributions, while other employers are not contributing enough to adequately cover their liabilities.

H.R. 2830. Rather than using a single interest rate, a modified yield curve would be phased in over three years starting in 2007. Use of the yield curve recognizes the fact that an employer's liabilities depend on the demographics of the pension plan. For example, an employer with a disproportionate number of retirees and older workers may have much larger liabilities in the short-term compared to a start-up company with a growing workforce. H.R. 2830 accounts for plan demographics by requiring use of a short-term interest rate to measure short-term liabilities and use of longer-term interest rates for longer-term liabilities.

Specifically, pension liabilities would be divided into three segments: those due within (1) five years, (2) between six and 20 years and (3) beyond 20 years. The Secretary of the Treasury would be directed to develop a yield curve based on a three-year weighted average of investment grade corporate bonds. The yield curve would be divided into three corresponding segments, and the interest rates in each segment would be averaged to produce a single interest rate for that segment.

The current-law corporate bond rate is extended one year.

Measuring Current Liabilities – Mortality Assumptions

Current Law. Plans must use the 1983 Group Annuity Mortality (GAM) Table.

Use of the outdated GAM Table does not account for the fact that average life expectancy has increased since 1983 and may, therefore, result in inaccurate measurements of liability.

H.R. 2830. Plans would be required to use an updated mortality table, called the RP-2000 Combined Mortality Table projected to the plan's valuation date. Use of the table would be phased in over five years, starting in 2007. Plans could apply to the Secretary of the Treasury to use another mortality table that better reflects the actual experience of that plan.

Amortization Period

Current Law. If assets fall below the plan's funding target, the shortfall must be funded over a certain number of years called an "amortization" period. The length of the amortization period varies from five to 30 years, depending on the reason for the shortfall (e.g., plan amendments, past service credits, experience losses, etc.).

H.R. 2830. Funding shortfalls must be amortized over seven years.

Funding Rules for "At-Risk" Plans

Current Law. Underfunded plans must make deficit reduction contributions (DRC) in addition to their minimum required payment.

H.R. 2830. If a plan's assets fall below 60 percent of its liabilities, the plan is considered "at-risk" and is subject to special rules. For purposes of measuring liabilities, an "at-risk" plan must assume that all workers will retire at the earliest possible date, and that all of them will elect to take their benefit in a form that results in the highest present value. Empirical evidence suggests that these assumptions are accurate when plans are underfunded because workers want to withdraw all of their benefits before the plan is terminated, thus creating a "run on the bank." At-risk plans are also subject to an additional "loading-factor" equal to $700 per participant plus 4 percent of their at-risk liability. The transition between the normal and at-risk funding targets is five years.

Lump Sum Payments

Current Law. Some DB plans give workers the option to take their pension benefits in the form of a lifetime annuity or a lump sum payment. The lifetime value of the benefit should be the same regardless of which option is chosen. Plans are required to use the 30-year Treasury bond rate to calculate the size of the lump sum benefit (i.e., to equate it to the value of an annuity).

H.R. 2830. Lump sum distributions are calculated using the modified yield curve, based on current interest rates instead of a three-year weighted average. Using the yield curve to calculate pension contributions and lump sum distributions ensures that these benefits are funded properly. Use of the modified yield curve is phased in over three years starting in 2007.

Using a lower interest rate to fund lump sum distributions would artificially make the lump sum option more attractive than an annuity. This could weaken retirement security by discouraging annuitization. It could also lead to a drain on pension assets, which would harm other workers in the plan and contribute to systemic underfunding.

Reforming Credit Balances

Current Law. If an employer contributes more than the minimum required amount in a given year, the excess contribution is credited to the plan's assets. It is also credited to a notional account called a "credit balance." The credit balance accrues interest every year at the plan's assumed rate of return regardless of actual market performance. Accumulated credit balances can be used to offset minimum required contributions in future years. Credit balances are counted in plan assets for purposes of determining whether a plan is subject to the DRC, but they are subtracted from plan assets to determine the amount of the DRC.

Credit balances create several risks under current law. First, allowing credit balances to grow at an assumed interest rate results in artificially inflated balances. Second, these inflated balances can be used to avoid contributions, even if the plan is severely underfunded. Third, credit balances can mask the true funding status of a plan because the credit balance can be used to simultaneously offset current and future liabilities. In other words, the same dollar of excess contributions is counted once in the plan's assets (to offset benefits that have already been earned) and again in the plan's credit balance (to offset future required contributions). The Administration's funding reform proposal would have eliminated all credit balances.

H.R. 2830. Starting in 2007, credit balances must reflect actual market gains and losses.

In general, plans are given a choice with regard to use of their credit balances: the credit balance may be counted in plan assets for funding purposes, or it may be used to offset required contributions. However, it cannot be used for both purposes at the same time. If the credit balance is counted in plan assets, then the amount set aside to offset required contributions is permanently reduced. There are some exceptions to this rule.

For purposes of determining whether a funding shortfall exists in a given year, existing credit balances may be counted in plan assets (they may also be used to offset required contributions). If the funding target is met, then no funding shortfall exists for that year. The funding target is phased in over five years for purposes of this "gateway test."

If the funding target is not met, the plan must calculate the size of the funding shortfall in order to calculate the required minimum contribution for that year. To calculate the size of the shortfall, credit balances must be subtracted from plan assets. Alternatively, they may be included in plan assets as long as the amount set aside to offset required contributions is permanently reduced.

Plans that are less than 80 percent funded cannot use credit balances to skip required pension payments. To calculate whether a plan is 80 percent funded for this purpose, *new* credit balances must be subtracted from plan assets, but credit balances that accumulated prior to 2007 can continue to be counted in plan assets.

Benefit Restrictions for Underfunded Plans

Current Law. (1) Plans may not increase benefits if they have applied for a funding waiver. (2) Plans that are less than 60 percent funded may not adopt amendments that increase the plan's liability unless security is provided. (3) Benefits may not be increased if the employer is in bankruptcy. (4) Certain benefit payments are limited if a plan has a liquidity shortfall. (5) Pension plans are not permitted to provide severance benefits.

H.R. 2830. Plans that are at least 80-percent funded can increase benefits and pay plant shutdown benefits. However, if these liabilities reduce the plan's funding status below 80-percent, then contributions must be made to restore the plan's funding status to 80 percent. Plans that are less than 80-percent funded can increase benefits and pay plant shutdown benefits as long as contributions are made to cover the cost of these liabilities. Finally, if the plan is less than 60-percent funded, benefit accruals are frozen until the plan's funding status is restored to 60 percent. These rules are necessary to prevent underfunded plans from digging a deeper hole by increasing benefit liabilities when the plan cannot afford to pay benefits that have already accrued.

To determine whether these benefit restrictions apply, credit balances are subtracted from plan assets. However, if a plan is 100-percent funded when credit balances are included in assets, the benefit restrictions do no apply. The 100-percent funding target is phased in over five years, starting in 2007.

If benefit restrictions are triggered, credit balances are automatically used to satisfy the funding requirements, thus preventing the benefit restrictions from taking place. This rule applies to collectively bargained plans.

The benefit restrictions are effective in the earlier of: 2009 or the expiration of the existing collectively bargained agreement.

Restrictions on Executive Compensation

Current Law. The *American Jobs Creation Act of 2004* created new rules to govern deferred compensation plans for executives. The new law provides that compensation is immediately taxable to the executive unless certain requirements are met to ensure there is no constructive receipt of the compensation and that the executive faces a substantial risk of forfeiture. Violation of the rules results in immediate taxation plus interest and a 20-percent penalty.

Recent experiences have highlighted situations in which companies continued to fund large executive compensation arrangements for top executives while the pension plans of rank-and-file employees were severely underfunded. In many cases, the executives benefiting from these arrangements were also responsible for making decisions about pension plan funding.

H.R. 2830. Employers cannot fund an executive compensation plan if the qualified pension plans is less than 60 percent funded. If the rule is violated, the amounts set aside for the executive are immediately taxable and subject to interest and a 20-percent penalty.

Reforming Countercyclical Funding Rules

Current Law. In general, employers may fund up to 100 percent of the plan's current liability. Excess contributions are not tax-deductible and may be subject to an excise tax penalty.

The maximum funding limits prevent employers from increasing contributions in profitable years. This countercyclical effect is compounded by the fact that interest rates tend to fall when the economy is weak, thus increasing required contributions during unprofitable years.

H.R. 2830. The maximum funding limit is increased to 150 percent of the plan's funding target, giving employers more flexibility to increase contributions when they have available resources.

PBGC Premiums

Current Law. Employers who maintain DB pension plans must pay a flat-rate premium to the PBGC equal to $19 per plan participant. Underfunded plans must also pay a variable rate premium equal to $9 for every $1,000 of unfunded vested benefits.

The flat-rate premium has not been adjusted for inflation since it was set in law more than 14 years ago. In addition, current funding rules allow plans to avoid paying variable rate premiums if they reach the statutory "full funding limit," even if the plan is underfunded.

H.R. 2830. The flat-rate premium is increased from $19 to $30 over five years (three years for plans that are less than 80 percent funded). The premium is also indexed annually to reflect wage growth. For purposes of the variable rate premium, vested benefits are calculated under the new rules of the bill, using fair market value of assets. In addition, the full funding limit is repealed, thus closing the current-law loophole that allows underfunded plans to avoid variable rate premiums. Finally, employers that terminate their plans through bankruptcy must pay a $1,250 premium per participant for three consecutive years once they emerge from bankruptcy.

4. FUNDING REFORMS FOR MULTIEMPLOYER PENSION PLANS

Current Law. Multiemployer pension plans are maintained by two or more employers in the same industry that pool their assets and liabilities to form a pension plan for workers in the industry. The plan is governed by a board of trustees comprised of an equal number of employers and union representatives. Benefit and contribution levels are set by the terms of collectively bargained agreements. Employers that withdraw from the plan must pay withdrawal liability, and the remaining employers in the pool are liable for the benefits of workers and retirees that remain in the plan. The PBGC maintains a separate insurance program for multiemployer plans and acts as a lender of last resort if the plan cannot pay promised benefits.

H.R. 2830. The bill creates a structure for identifying financially troubled plans and improving their funding status by creating two zones.

1. Plans in the "yellow zone" are less than 80-percent funded and considered to be endangered. Plan trustees must adopt a financial plan to improve funding by one-third within 10 years. If the plan is between 65- and 70-percent funded, or if the plan's actuary certifies that the one-third benchmark cannot be met, then the plan must provide for a one-fifth improvement within 15 years. Benefits cannot be increased if the plan is less than 65-percent funded.

2. Plans in the "red zone" are less than 65-percent funded and considered to be in critical financial condition. Plan trustees must adopt a rehabilitation plan to exit the red zone within 10 years. The plan must include increased employer contributions, restrictions on future benefit accruals, expense reductions, and funding relief measures to help the plan exit the red zone. The plan may provide for surcharges and modifications to ancillary benefits if necessary to protect normal retirement benefits. The funding deficiency excise tax is waived for plans in the red zone, but sanctions apply for failure to adopt and comply with a rehabilitation plan.

In addition, H.R. 2830 includes two reforms that apply to all multiemployer plans. First, most amortization periods are reduced from up to 40 years under current law to 15 years. Second, the maximum tax-deductible contribution is increased from 100 percent of the full funding limit under current law to 140 percent of current liability.

5. NOTICE AND DISCLOSURE REQUIREMENTS

H.R. 2830 includes new notice and disclosure requirements for all DB plans to provide workers, retirees and the PBGC with better and timelier information about the financial condition of their pension plans.

- Workers and retirees must be provided with an annual "plan funding notice" with information about the plan's assets, liabilities, financial condition, and funding policies.
- Underfunded plans are required to file financial information with the PBGC on the Form 4010. A notice must be given to workers and retirees when a Form 4010 is filed.
- The existing Form 5500 is enhanced to provide more information, particularly about plan mergers and actuarial assumptions.
- Existing annual summary reports must provide additional information about the plan's funding status and must be filed within a shorter period of time.
- Multiemployer plans must notify a contributing employer of their withdrawal liability upon request.

6. HYBRID PENSION PLANS

Current Law. "Hybrid" pension plans combine the features of DB and DC plans. Like DB plans, they are funded by the employer and insured by the PBGC. Like DC plans, they are portable, and benefits are based on an account balance. Hybrid plans are legally classified as DB plans because the individual accounts are only notional. As a result, hybrids must follow DB rules even though they function like DC plans.

The most common type of hybrid design is a "cash balance plan," in which employees receive "credits" based on their pay. The credits are increased annually by a set interest rate. At retirement, the employee receives a benefit based on the account balance. The employer is responsible for funding the plan and bears the investment risk.

Some employers have converted traditional DB plans to cash balance plans. A few of these conversions have raised questions about the legality of cash balance plans. Specifically, opponents argue that cash balance plans may be age discriminatory because the credits for younger workers result in higher benefits than identical credits for older workers. This is necessarily true because the credits for younger workers earn interest over a longer period of time. (Under the opponents' rationale, the most basic 401(k) plan is illegal.)

One recent court case, which is currently under appeal, found that cash balance plans are age discriminatory based on a plain-faced reading of the DB laws. This case has cast legal uncertainty on all existing cash balance plans, including those that never underwent a conversion. If the legal uncertainty facing these plans is not resolved, many employers may terminate their plans, leaving more than seven million employees with no employer pension.

H.R. 2830. Current law is clarified by creating a uniform age discrimination standard for all DB plans, including hybrid pension plans. Under this clarification, a plan is not age discriminatory if a worker's entire accrued benefit is equal to or greater than that of a similarly situated younger worker in the plan. The accrued benefit is determined without regard to early retirement subsidies. The bill also clarifies that an accrued benefit may be calculated as the account balance of the worker's notional account or the current value of the accumulated percentage of the employee's final average compensation. These provisions clarify the intent of current law.

7. INVESTMENT ADVICE

Current Law. Employers are discouraged from offering DC plan participants with access to professional investment advice because fiduciary responsibilities are unclear and prohibited transaction laws may prevent plan administrators from offering advice to plan participants.

H.R. 2830. Employers have the option of providing workers with access to professional investment advice. Fiduciary safeguards are created to protect workers from potential conflicts of interest. In addition, the provision clarifies that the fiduciary advisor, not the employer, is liable for the advice given.

8. OTHER PROVISIONS

Current Law. ERISA and the IRC impose an excise tax on certain prohibited transactions between a pension plan and a party in interest. The prohibited transaction rules are intended to prevent self-dealing, but may sometimes prevent plans for engaging in legitimate transactions that reduce costs for the plans.

H.R. 2830. The excise tax is waived for inadvertent failures of the prohibited transaction rules if the rules are timely corrected. In addition, the bill allows an exemption from the prohibited transaction rules to allow pension assets in separately managed accounts to be included in a block trade if certain conditions are met.